



LKS | COMPETITION LAW

Yearly Round-Up 2024

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Introduction

2024 was a water-shed year for competition law in India as the regulatory powers of the Competition Commission of India (“**CCI**”) were expanded with the increased scope of Competition Act, 2002 (as amended by the Competition (Amendment) Act, 2023 (“**Amended Act**”)) (“**Competition Act**”). Several regulations were amended, many new ones introduced and the much-needed guidance on penalty imposition was finally published this past year. The CCI was cautious while starting new investigations and the focus on digital markets players continues to be apparent. The consistency in the review of mergers and acquisitions was evident with the majority of combinations receiving unconditional approval well within the statutory timeline.

This article recapitulates the competition law highlights of 2024 and is divided into three parts, **part I** highlights noteworthy enforcement trends, **part II** includes an overview of some of the key combinations reviewed by the CCI, and **part III** focuses on various regulatory developments.



Part-I: Enforcement Trends

A. At the CCI

1. CCI absolved Sugar Mills from bid rigging charges, takes a U-turn from its earlier decision¹

Upon reconsideration of the matter on a remand order from National Company Law Appellate Tribunal (“NCLAT”), CCI exonerated three public sector oil marketing companies (“OMCs”), three sugar mills’ associations, and fourteen sugar mills in Uttar Pradesh from bid-rigging allegations in relation to tenders for procurement of ethanol. Interestingly, in this case, in the first round of litigation, the CCI had found the sugar mills and their associations to be collusively rigging bids in tenders floated by the OMCs and imposed a cumulative penalty of INR 38.052 crore (~USD 4.436 million). CCI has now concluded that there was no evidence to show that the parties engaged in exchange of commercially sensitive information while submitting their bids. It was observed that similar production costs of the companies justified the likelihood of quoting prices in the similar range and the commercial and operational cost justified joint tendering. Accordingly, CCI reversed its previous decision, closing the matter.

2. CCI penalised Meta for WhatsApp’s privacy policy update of 2021²

CCI penalised Meta INR 213.14 crores (~USD 24.85 million) for abusing its dominant position by way of WhatsApp’s Privacy Policy Update in the year 2021. Meta had acquired WhatsApp in 2014. WhatsApp’s ‘take-it-or-leave-it’ privacy policy obligated users to accept all terms and share their data with other Meta companies to continue availing WhatsApp’s services. This privacy policy enabled cross-platform integration of data which strengthened Meta’s ability to deliver more personalized and targeted ads resulting in denial of market access to rivals of Meta while consolidating its leading position in display advertising by way of its dominant position in the market for OTT messaging apps through smartphones in India. In addition to the fine, the CCI also directs Meta to undertake certain remedial measures including (i) to stop sharing WhatsApp user data with other Meta companies for advertisement purposes for a period of 5 years; and (ii) include detailed explanation in the WhatsApp policy regarding the use of data shared with other Meta Companies for purposes other than advertising etc.

1. *India Glycols Limited vs. Indian Sugar Mills Association and Others, Case No. 21/2013.*

2. *In Re: Updated Terms of Service and Privacy Policy for WhatsApp users, Suo Moto Case No. 01/2021.*

3. CCI issued cease and desist orders against Table Tennis Federation and its affiliated bodies³

The CCI issued cease and desist orders against The Suburban Table Tennis Association (“**TSTTA**”), Maharashtra State Table Tennis Association (“**MSTTA**”), Gujarat State Table Tennis Association (“**GSTTA**”) and Table Tennis Federation of India (“**TTFI**”). It was found that TTFI and its above-mentioned affiliates by issuing WhatsApp advisories, public notices, and incorporating certain anti-competitive clauses such as right to prohibit unauthorised tournaments, restriction on players from participating in any unrecognised tournament etc., in their byelaws, restricted the organization of table tennis tournaments outside the framework of tournaments organized by them and sought to prevent players from participating in such events. CCI found that TTFI and its affiliates abused its dominant position gained by the virtue of regulatory powers to govern table tennis in India from the district to the national level and this conduct was also found to be in the nature of vertical restraint. No monetary penalty was imposed in light of the corrective measures undertaken by the enterprises during the course of investigation.

4. CCI directed investigation into Google's real money games pilot program⁴

An investigation has been directed into Google's Real Money Games (“**RMG**”) pilot program allowing only two types of RMGs to be listed on the Google Play Store in India, i.e., Daily Fantasy Sports (“**DFS**”) and Rummy. CCI observed that the exclusion of other RMGs from Play Store may result in significant disadvantage and distortion of competition, and thus, it is imperative to investigate whether selection of apps is transparent, objective and unambiguous considering the existing legal landscape. Additionally, CCI warranted investigation into Google's Ad policy permitting advertisements only for DFS and Rummy games, undermining other player's market visibility.

5. CCI directed probe against Google's payment policies⁵

The CCI has directed the Director General to investigate allegations that Google is implementing its payment policy on the Google Play Store in a discriminatory manner. Upon examination of the information, CCI was of the *prima facie* opinion that Google abuses its dominant position in the market for app stores to impose charges disproportionate to the economic value of services being rendered to the app developers and that there appears to be no clear rationale for discriminating between digital content and physical content on the Play Store.

3. *TT Friendly Super League Association vs. The Suburban Table Tennis Association & Others, Case No. 19/2021.*

4. *Winzo Games Private Limited vs. Google LLC & Others, Case No. 42/2022.*

5. *In Re People Interactive India Private Limited vs. Alphabet Inc. and Others, Case No. 37/2022.*

B. At the Supreme Court ("SC")/High Courts ("HC")**1. Madras HC condemns CCI's procedural opaqueness while adding new parties to the investigation⁶**

The Madras HC, quashed CCI's order that changed the status of MRF from a 'third party' to an 'opposite party/OP' in an ongoing bid-rigging cartel investigation into the tyre sector without giving prior intimation to MRF. Madras HC observed that though CCI has the authority to add parties to an investigation, the same ought to be done through proper procedure and with a speaking order.

2. Guwahati HC quashed CCI proceedings against cement companies over cartelization⁷

The Guwahati HC, set aside CCI proceedings against cement manufacturing companies, namely Star Cement Limited, Calcom Cement India Limited, and TOPCEM India noting absence of any *prima facie* evidence of collusion. The Guwahati HC noted that the increase in price which was the factor considered by the CCI while directing investigation was not uniform and the wholesalers had the discretion to pass the benefits of discounts offered by cement companies to customers. CCI's order directing investigation was found a nullity as the jurisdictional fact was not established.

3. SC upholds settlement between JCB and Bull Machines to quash investigation pending before the CCI

The SC dismissed CCI's appeal challenging Delhi HC's order of August 2024⁸ that took a private settlement reached between JCB India Limited ("**JCB**") and Bull Machines Private Limited ("**Bull Machines**") on record and terminated CCI proceedings. JCB had secured an *ex parte* injunction from the Delhi HC in 2011 against Bull Machines claiming infringement of copyright, piracy of registered design, passing off etc. While the parties were engaged in settlement negotiations over the disputed IPs, Bull Machines had filed an information before CCI alleging abuse of judicial process resulting in abuse of dominance by JCB. The CCI based on the allegations directed investigation by the DG and a dawn raid was conducted on JCB's premises. On reaching the settlement, Bull Machines sought to withdraw the information before the CCI which was not allowed. The Delhi HC set aside the CCI inquiry by taking on record the settlement.

6. *MRF vs. CCI, WP. Nos.6493, 6497 & 6502 of 2024.*

7. *Star Cement vs. Competition Commission of India, WP(C)/6343/2018.*

8. *JCB India Limited and Anr vs. Competition Commission of India, W.P.(C) 2244/2014 & CM APPL. 31397/2021.*



Part-II: Merger Control Cases

1. Media and entertainment landscape transformed, CCI approves Reliance-Disney Merger

CCI approved subject to modifications the combination of the entertainment businesses (along with certain other identified businesses) of Viacom18, part of Reliance Industries Limited Group ("**RIL Group**") and Star India Private Limited ("**SIPL**"), wholly owned by The Walt Disney Company ("**TWDC**"). Resultantly, SIPL has become a joint venture ("**JV**") between Reliance (~16.6%), Viacom (~46.6%), and existing Disney subsidiaries (~36.8%). In order to mitigate the competition concerns such as effect on pricing for advertisers arising from the JV in the market for TV channels and its segments, retail supply of AV content especially sports content particularly cricket through OTT streaming platforms, and supply of advertising airtime, CCI accepted the voluntary proposal for modifications including divestment of certain TV channels, restrictions on bundling TV and OTT advertisement sales slots for IPL, ICC, and BCCI streamed cricket matches etc. given by the parties.

2. CCI invalidates green channel filing by a Motilal Oswal Financial Services Limited investment fund

CCI penalised India Business Excellence Fund – IV ("**IBEF-IV**") for incorrectly seeking a green channel approval of its acquisition of 8.12% to 10.57% of shareholding in VVDN Technologies Private Limited ("**VVDN**"). Upon scrutiny of the notice, CCI observed that there existed a supply arrangement between the VVDN and a subsidiary of IBEF-IV's managing company regarding sale/supply of printed circuit boards. A penalty of INR 10 lakhs (~USD 0.01166 million) was imposed on IBEF-IV with a direction to file a fresh notice.

3. CCI approved Google's investment in e-commerce giant Flipkart

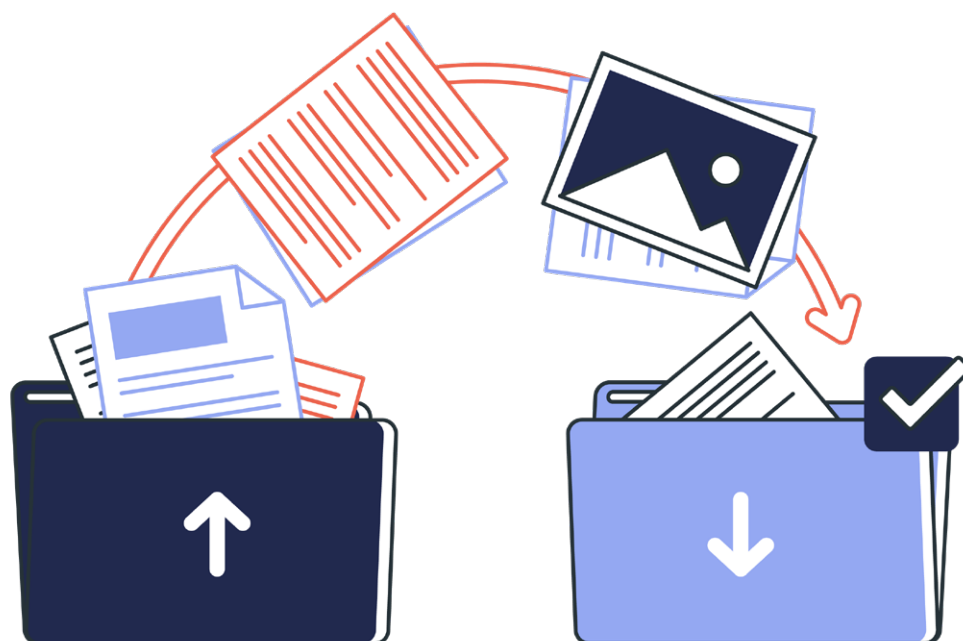
Shoreline International Holdings LLC, a wholly owned subsidiary of Alphabet Inc. ("**Google**") has made a minority, non-controlling investment through subscription of shares in Flipkart Private Limited, a subsidiary of Walmart Inc. The transaction was approved by CCI. As more consumers incline towards online shopping and payment, Google's investment in Flipkart appears to be a strategic effort to reinforce its presence in India's e-commerce sector.

4. UltraTech secures majority shareholding in India Cements

CCI approved acquisition of 32.72% of share capital of India Cements Limited ("**India Cements**") from the promoters of India Cements and Sri Saradha Logistics Private Limited and 26% share capital by way of an open offer by UltraTech Cement Limited ("**UltraTech**"). The transaction was filed in Form II as Ultratech and India Cements enjoy a high market share in the market for manufacture and sale of grey cement and ready-mix concrete.

5. Mankind expands its capacity post CCI's approval

CCI approved Mankind Pharma Ltd.'s acquisition of the entire shareholding of Bharat Serums and Vaccines Limited. The transaction was notified in Form II. CCI identified 45-50% combined market shares in India in one of the horizontal markets, namely, market for other nutrients-oral liquids in finished dosage formulations. CCI also considered the vertical linkages present in different stages of pharmaceutical supply chain at the broader level viz., intermediates, active pharmaceutical ingredients, excipients, pharmaceutical packaging etc. However, despite the high market shares, the CCI did not find any competition concerns which required to be addressed in order to obtain approval from the CCI.



Part-III: Regulatory Developments

1. Competition Commission of India (Lesser Penalty) Regulations, 2024

These Regulations, notified on 20 February 2024, marked the advent of "leniency plus", a cartel detection mechanism. It incentivizes the leniency applicant of existing cartels to disclose information about another cartel unknown to the CCI in lieu of additional reduction in monetary penalty.

2. Competition Commission of India (Settlement) Regulations, 2024 and Competition Commission of India (Commitment) Regulations, 2024

Government of India activated Sections 48A (Settlement) and 48B (Commitments) of the Competition Act, by notifying the implementing regulations with respect to the settlement and commitment regimes on 6 March 2024. These regulations specify the eligibility criteria, timelines, scope of proposal, fee, withdrawal, rejection, monitoring and reformative measures to expedite adjudication, and promptly address market distortions.

3. Competition Commission of India (Determination of Turnover or Income) Regulations, 2024

Notified on 6 March 2024, these regulations aid in determining the turnover or income of the enterprise and individuals for the purposes of imposition of penalty under Section 27 and Section 48 of the Competition Act.

4. Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024

Notified on 6 March 2024, these guidelines stipulate the methodology that CCI shall consider for the purposes of calculating the penalty to be imposed on enterprises found to be in contravention of the Competition Act.

5. Revised Thresholds under Section 5 of the Competition Act

The Ministry of Corporate Affairs ("MCA") on 7 March 2024 revised the threshold value of assets and turnover for notification of combinations by 150% over the original value.

6. Draft Digital Competition Bill, 2024 ("DCB")

The DCB is a *de novo ex ante* legislation proposed to regulate the conduct of certain large digital enterprises referred to as systemically significant digital enterprises ("SSDE"). The DCB identifies certain conduct to result in anti-competitive outcomes when undertaken by

SSDEs and as such in order to prevent digital markets from tipping in favour of such SSDEs the DCB envisages a pre-emptive regulatory regime.

7. Competition Commission of India (Combinations) Regulations, 2024

To incorporate the changes introduced by the Amended Act, the CCI on 9 September 2024 notified the Competition Commission of India (Combinations) Regulations, 2024 replacing the erstwhile Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. These Regulations *inter alia* provide for the 'value of transaction' and criteria for 'substantial operations in India' under the newly introduced 'deal value threshold' ("DVT") for combinations, exercise of rights in case of open market purchases, procedure for merger review and modification of the proposed combinations etc.

8. Competition (Minimum Value of Assets or Turnover) Rules, 2024

The MCA, on 9 September 2024, codified the *de minimis* exemption from notification of combinations under the Competition Act through these rules. The rules retain the recently updated value of assets and threshold for the application of the exemption at assets of the value of INR 450 crore (~USD 54 million) and turnover of the value of INR 1250 crore (~USD 151 million) in India.

9. Competition (Criteria of Combination) Rules, 2024

Notified on 9 September 2024, these rules codify the green channel automatic approval mechanism and clarifies its applicability criteria. Under the green channel mechanism, a transaction is deemed to have been approved upon filing notice with the CCI. This process is aimed at significantly reducing the time and cost of transactions which are notified purely on technical grounds and where there may not be any competition risks due to the nature of activities carried out by the parties to the transaction.

10. Competition (Criteria for Exemption of Combination) Rules, 2024

Notified on 9 September 2024, these rules list transactions that have been exempted from the requirement of notification to the CCI as they are unlikely to cause an appreciable adverse effect on competition.

11. Notifications of provisions relating to DVT and open market purchases

On 10 September 2024, provisions relating to DVT and open market purchases introduced by way of Amended Act were notified. The acquirer is under an obligation to notify to the CCI wherein the transaction value is above INR 2000 crore (~USD 233.18 million), and the target has substantial business operations in India.

Parties no longer need prior approval from the CCI to acquire shares through an open offer on regulated stock exchange. The acquirer is required to file notice of such open market

purchase or acquisition to the CCI in the prescribed form within 30 days from the date of such purchase and is prohibited from exercising any ownership, beneficial or economic right arising out of the transaction before obtaining CCI's approval.

12. Competition Commission of India (General) Regulations, 2024

To incorporate changes introduced by the Amended Act as well as various other modifications based on the working experience of the CCI, the Competition Commission of India (General) Regulations, 2024 was introduced on 17 September 2024 repealing the erstwhile Competition Commission of India (General) Regulations, 2009.

Conclusion

Over the past year, the competition law landscape in India has undergone major substantive and procedural changes. These changes will contribute to a more robust and competitive market landscape in India, advantageous for both consumers and businesses in the long run. The coming year is likely to see how several of these amendments are practically executed. The DVT for mergers and acquisitions and the commitment and settlement regimes are three major new developments that will require special attention from the Indian competition regulator. Digital markets remain one of the key areas of attention, CCI is expected to place greater scrutiny on tech platforms not only through enforcement but also via DVT under the merger control regime.

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2024 in Numbers

ANTITRUST

Investigations started	Disposed off at <i>prima facie</i> stage	Contraventions found
08	36	02
Penalty imposed	Amount of penalty imposed	
01	INR 213.14 Cr (~USD 24.85 million)	

COMBINATIONS

Transactions notified	Notified in Form I	Notified in Form II
126	110	16
Green channel approvals	Transactions approved without modifications	Transactions approved with modifications
20	89	02
Penalty imposed for not notifying transaction	Amount of penalty imposed	Average number of days to approve a transaction
01	INR 10 lacs (~USD 0.01166 million)	27

APPEALS

Appeals filed before NCLAT	Appeals disposed of by NCLAT
15	01



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